

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

VICTORIA DIVISION

CHAD LOUIS FURCH, #1552973

v.

RICK THALER, Director of
TDCJ-CID

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CIVIL ACTION NO. V-13-009

OPINION AND ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge that was entered on April 4, 2008, recommending that Respondent's Motion for Summary Judgment be granted and that Petitioner's federal habeas corpus writ be dismissed with prejudice. (Dkt. No. 22). Petitioner filed objections to the Report and Recommendation. (Dkt. No. 25).

The Court has given this matter *de novo* review as required by 28 U.S.C. §636(b)(1)(C). After careful consideration of the petition, the Respondent's Motion, all the state court records, and the Petitioner's objections to the Report and Recommendation, the Court concludes that the Petitioner's objections are without merit and concurs with the Magistrate Judge's conclusion that this federal habeas corpus writ should be dismissed. Although it is true that the Magistrate Judge failed to address one of Petitioner's claims (*i.e.*, "that his attorney was ineffective in failing to object to evidence of a civil suit"),¹ this

¹ Dkt. No. 25 at 16.

Court concludes that Petitioner is not entitled to federal habeas relief on this claim because he has not demonstrated prejudice, as is required by *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and he has also failed to show that the state court determination of his ineffective assistance of counsel claim was contrary to, or involved an unreasonable application of clearly established federal law. *See* 28 U.S.C. §2254(d)(1); *Hill v. Johnson*, 210 F.3d 481, 485 (5th Cir. 2000).


CERTIFICATE OF APPEALABILITY

Under 28 U.S.C. §2253, a petitioner must obtain a certificate of appealability before he can appeal the district court's decision to dismiss his petition. This Court will grant a certificate of appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a substantial showing, a petitioner must demonstrate that issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further. *Lucas v. Johnson*, 132 F.3d 1069, 1073 (5th Cir.1998). For the reasons stated in Opinion and Order, Furch has not made a substantial showing of the denial of a constitutional right. *Newby v. Johnson*, 81 F.3d 567, 569 (5th Cir.1996). The Court will deny the issuance of a Certificate of Appealability.

Accordingly, it is hereby, **ORDERED AND ADJUDGED** that:

- 1) Petitioner's **OBJECTIONS** (Dkt. No. 25) are **OVERRULED**;
- 2) The Report and Recommendation of Magistrate Judge Froeschner (Dkt. No. 22) is **ACCEPTED** and **ADOPTED**;
- 3) the Motion for Summary Judgment (Dkt. No. 15) of Respondent, Rick Thaler, Director of TDCJ-CID, is **GRANTED**;
- 4) Petitioner Chad Louis Furch's federal habeas corpus petition is **DISMISSED, in its entirety, with prejudice**;
- 5) A Certificate of Appealability is **DENIED**; and
- 6) All pending motions, if any, are **TERMINATED**.

SIGNED at Galveston, Texas, this 10th day of June, 2014.



GREGG COSTA
UNITED STATES CIRCUIT JUDGE
(Sitting by Designation)